



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WMP

Docket No: 4854-02
15 November 2002

[REDACTED]

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This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 November 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 27 June 1972 for four years at age 19. Your record reflects that you served without incident until you were convicted by special court martial of unauthorized absence from 20 December 1974 to 3 March 1975, a period of 73 days, and possession of 12.2 grams of marijuana. You were sentenced to 25 days of restriction, 14 days of hard labor without confinement, forfeitures of \$125 per month for two months, and reduction to private first class.

You commenced another unauthorized absence on 25 September 1975 and remained absent until you surrendered yourself to the FBI on 3 February 1976, a period of 131 days. On 20 March 1976, you submitted a request for an undesirable discharge for the good of the service in lieu of trial by court-martial for the 131 days of unauthorized absence. Prior to submitting this request, you

conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 25 March 1976 your request for discharge was approved by the discharge authority. As a result of such action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the undesirable discharge on 8 April 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and Immaturity, and your contention that your misconduct was the result of family problems. Nevertheless, the Board found that your two periods of unauthorized absence totaling 204 days clearly warranted an undesirable discharge. The Board also believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director